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No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1968

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

vs.

EUGENE MILLER,
Respondent.

MEMORANDUM OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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The petitioner here insists on submitting to this Court a question which has been decided in *Stoner* v. *California*, 376 U.S. 483, and *Warden* v. *Hayden*, 387 U.S. 294. The facts of the case clearly indicate that the automobile searched was respondent's. He did not give permission to search the automobile.

In *Warden*, this Court recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property, and that it has increasingly discarded fictional and procedural barriers resting on

property concepts. 387 U.S. 994, 304. There, this Court was faced with the question of whether a search could be made for "mere evidence". In ruling that such a search could be made, the court made this proviso, "but if [the rejection of the mere evidence rule] does enlarge the area of permissible searches, the intrusions are nevertheless made after fulfilling the probable cause and particularity requirements of the Fourth Amendment and after the intervention of 'a neutral and detached magistrate' *Johnson* v. *United States,* 333 U.S. 10, 14." 387 U.S. 294, 309-310.

Nowhere in the record in this case is there any reason for the absence of a search warrant.

The police officers had obtained a warrant for the arrest of the defendant. They had the opportunity to investigate the license plate registration records of the Secretary of State. The State makes no attempt to justify the search on the basis that it was incidental to a lawful arrest. "Where, as here, officers are not responding to any emergency, there must be compelling reasons to justify the absence of a search warrant. A search without a warrant demands exceptional circumstances, • • •. We will not assume that where a defendant has been under surveillance for months, no search warrant could have been obtained. [A]ll the circumstances bearing upon the necessity to make this search without a warrant are absent from this record. We cannot allow the constitutional barrier that protects the privacy of the individual to be hurdled so easily.

"• • • [N]o reason, except inconvenience of the officers and delay in preparing papers and getting before a magistrate, appears for the failure to seek a search warrant. But those reasons are no justification for by-passing the constitutional requirement • • •." *McDonald* v. *United States,* 335 U.S. 451, 454-455.

In view of the fact that the State was unable to show compelling reasons to justify the absence of a search warrant, because the protections of the Fourth Amendment are aimed at privacy rather than property rights and because this Court has made clear that "the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority'" *Stoner* v. *California*, 376 U.S. 483, 488, the decision of the Supreme Court of Illinois was squarely in keeping with the decisions of this Court and there are no good reasons for certiorari being granted in this case.

Respectfully submitted,

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